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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	**CCB/CPD File No. 98-63**
	)	
Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA	)	**CC Docket No. 98-157**
	)	

MCI WORLDCOM REPLY COMMENTS

MCI WORLDCOM, INC.

Alan Buzacott
Henry G. Hultquist
1801 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 887-3204

November 29, 1999

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MCI WORLDCOM REPLY COMMENTS

I. Introduction and Summary

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its reply to comments on the Further Notice of Proposed Rulemaking in the above-captioned proceedings.

To the extent that the Commission permits geographic deaveraging of the price cap LECs' common line services, the Commission should only permit ILECs to shift revenues from SLC rates in urban areas to SLC rates in rural areas. The Commission should not permit the LECs to shift revenues foregone as a result of lower SLC rates in urban areas to PICC, CCL, or per-minute marketing rates.

While the SLC caps may limit the degree to which the ILECs can deaverage in a revenue-neutral manner, the Commission should not adopt the ILECs' proposals to facilitate SLC deaveraging by creating a large universal service fund using embedded cost principles. An embedded cost approach to would be contrary to the forward-looking cost principles adopted by the Commission in the Universal Service First Report and Order.

For the Commission to adopt a Phase II pricing flexibility framework for switched access services at this time would be inconsistent with its promise in the Access Reform First Report and Order that the market-based approach would be designed "so that deregulation occurs only when the reliability of market forces can be fully determined with respect to a particular service."[1] Without any experience with a competitive switched access market, there can be no assurance that the "triggers" adopted by the Commission would accurately identify a market sufficiently competitive to ensure just and reasonable rates.

The Commission should defer any action on Phase II pricing flexibility for switched access services until (1) there has been some experience with the Phase I pricing flexibility test for switched access services; and (2) there is at least some indication that competitive entry is constraining prices for switched access services. In the interim, the Commission could address any switched access Phase II pricing flexibility requests on a case by case basis, using the types of market power analysis

[1] In the Matter of Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, 16099-16100 (1997).

employed in the AT&T and COMSAT proceedings. Once the Commission has gained experience analyzing the competitive characteristics of the switched access market, the Commission would then be in a position to craft a generally-applicable Phase II pricing flexibility framework.

MCI WorldCom strongly supports the Commission's stated preference for marketplace solutions to any attempts by CLECs to impose unreasonably high switched access rates. For the marketplace to function, IXCs must be permitted to decline to purchase originating switched access when it is not in their business interest to do so. IXCs should also be permitted to impose surcharges on end users served by a CLEC that attempts to impose unreasonable switched access charges. However, IXCs have a duty to interconnect that necessarily requires that they accept the terminating and open-end switched access services of all LECs. To constrain the pricing of these services, the Commission should establish a rule that prohibits CLECs from charging more for terminating or open-end services than for originating access. In order to facilitate the adjudication of complaint proceedings regarding the level of CLEC access charges, the Commission should adopt a presumption that CLEC charges in excess of NECA rates are unjust and unreasonable. Upon a showing that charges exceed that level, the burden would shift to the CLEC to demonstrate the reasonableness of its charges. Alternatively, the Commission could adopt another benchmark rate for this purpose, so long as that rate takes account of the substantial differences between CLEC and ILEC rate and cost structures.

II. Common Line Deaveraging

While the ILECs argue that common line rate deaveraging should be permitted without restriction, most of the other commenters recognize that safeguards are necessary to protect competition and consumers.[2] As MCI WorldCom discussed in its initial comments, SLC deaveraging should be conditioned on (1) a showing that the ILEC is actually providing unbundled loops at deaveraged rates; (2) the elimination of the CCL and multiline business PICC; and (3) the widespread availability of the UNE platform.[3] And, when a LEC does meet the conditions for deaveraging, the deaveraging process should be subject to a number of safeguards: (1) deaveraging should be permitted only on the basis of UNE zones; (2) the annual change in deaveraged rates should be restrained by pricing limits similar to those used for transport rate deaveraging; and (3) the deaveraged rates should be subject to price floors and price ceilings such as those in those in the CALLS plan.[4]

One of the most important constraints that the Commission should impose on the geographic deaveraging of common line rates is a rule prohibiting SLC deaveraging from resulting in an increase in the CCL, per-minute marketing charge, or PICC. If a LEC chooses to reduce its SLC rates in urban areas, it should only be permitted to shift the foregone SLC revenues to SLC rates in rural areas; under no circumstances should the LEC be permitted to shift the foregone revenues to the CCL, PICC, or per-minute

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[2] See, e.g., AT&T Comments at 3-8.

[3] MCI WorldCom Comments at 3-4.

[4] MCI WorldCom Comments at 4-6.

marketing charge. As MCI WorldCom discussed in its initial comments, shifting costs from end user charges to the CCL, PICC, or per-minute marketing charge would be inconsistent with the Access Reform First Report and Order.[5]

Most LECs appear to recognize that revenues foregone due to SLC deaveraging in urban areas can only be shifted to SLC rates in rural areas, not to CCL or PICC rates. The LECs are concerned, however, that the SLC caps would limit their ability to deaverage in a revenue neutral manner.[6] For this reason, the LECs argue that the Commission should facilitate a greater degree of revenue-neutral deaveraging by (1) increasing the residential SLC cap; and (2) creating a new universal service fund.[7] In particular, several LECs support the CALLS plan, which would increase the residential SLC cap to $7.00 and would create a new $650 million universal service fund.[8] USTA proposes a plan of its own, which would create a large universal service fund to facilitate revenue-neutral geographic deaveraging.[9]

Both the CALLS and USTA approaches to sizing the universal service fund are fundamentally inconsistent with the principles adopted by the Commission in the Universal Service First Report and Order. The CALLS and USTA plans use an

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[5]MCI WorldCom Comments at 6-7.

[6]USTA Comments at 6 ("Deaveraging of the SLC should be permitted, but not required, since the current SLC caps may prevent any meaningful deaveraging of the SLC for a number of years.")

[7]USTA Comments at 7-8.

[8]See, e.g., GTE Comments at 11-12; Bell Atlantic Comments at 19-20.

[9]USTA Comments at 8.

embedded-cost approach to determining the universal service fund size, first calculating geographically-deaveraged price cap rates and then sizing the fund to supply the portion of the geographically-deaveraged rates that would be above the SLC caps. In the Universal Service First Report and Order, however, the Commission found that an embedded-cost approach to universal service funding "provide[s] the wrong signals to potential entrants and existing carriers," and that only a forward-looking cost approach sends the correct signals for entry, investment, and innovation.[10] To be consistent with the Universal Service First Report and Order, the universal service support available to a price cap LEC must be determined using forward-looking cost principles, without any consideration of the geographically-deaveraged price cap rates that the LEC would like to charge.

III. The Commission Should Not Establish a Framework for Switched Access Phase II Pricing Flexibility At This Time

The D.C. Circuit Court of Appeals has recognized that "moving from heavy to lighthanded regulation . . . can be justified by a showing that . . . the goals and purposes of the statute will be accomplished through substantially less regulatory oversight."[11] But the D.C. Circuit has also made clear that a "largely undocumented reliance on market forces" and an absence of "empirical proof" that market forces are sufficient to

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[10]In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8899-8900 (1997) (Universal Service First Report and Order).

[11]Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

ensure just and reasonable rates contravenes the agency's statutory responsibilities.[12] For this reason, the Commission promised in the Access Reform First Report and Order that its market-based approach would not be based on "largely undocumented reliance on market forces," but would instead be designed "so that deregulation occurs only when the reliability of market forces can be fully determined with respect to a particular service."[13]

Because the "reliability of market forces" cannot be fully determined with respect to switched access services at this time, the Commission cannot establish a Phase II pricing flexibility framework for switched access services. The Commission has no evidence that market forces can ensure that switched access rates are just and reasonable, only the theory that the threat of IXC self-supply using UNEs can constrain switched access prices.[14] Some commenters, such as Sprint, question the validity of this theory, suggesting that market forces will never be able to constrain the switched access rates assessed on IXCs.[15] The Commission certainly has no "empirical proof" of the

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[12]734 F.2d at 1509-1510 ("FERC set rate ceilings which, if reached in practice, would admittedly be egregiously extortionate and then failed to demonstrate that market forces could be relied upon to keep prices at reasonable levels throughout the oil pipeline industry. As a result, we find that FERC's action contravenes its statutory responsibilities under the Interstate Commerce Act.") In the case of the Commission's Phase II pricing flexibility, the Commission would essentially set no rate ceiling and would rely on undocumented market forces to constrain pricing.

[13]In the Matter of Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, 16099-16100 (1997).

[14]Id., 12 FCC Rcd at 16095-096.

[15]Sprint Comments at 8.

effectiveness of market forces in ensuring that rates are just and reasonable: every price cap LEC continues to price its switched access rates at the maximum permitted by the price cap rules.

Given that no LEC's switched access rates are being constrained by market forces, the Commission lacks the information it needs to design a Phase II framework for switched access services. Without any experience with a competitive switched access market, there can be no assurance that "triggers" adopted at this time would accurately identify a market sufficiently competitive to ensure just and reasonable rates. Thus, the adoption of a Phase II pricing flexibility framework for switched access services would contravene the Commission's statutory duty to ensure just, reasonable, and nondiscriminatory rates.

The Commission certainly cannot adopt the ILECs' proposal to free switched access services from price cap regulation once competitors are offering service to 50 percent of customer locations in the MSA or customer locations that represent 65 percent of SLC revenues.[16] The Commission cannot adopt this proposal because, by definition, it would expose up to 50 percent of the customer locations in an MSA to rates that are not just and reasonable. The Commission has never lifted rate regulation when the incumbent continued to have such broad-based market power. When the Commission ended rate regulation for AT&T's business services, it did so only after finding that the

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[16]The LECs offer no reason why these trigger points would ensure that rates are just and reasonable. As the LECs freely admit, their proposed trigger points were selected arbitrarily to mirror the thresholds the Commission adopted for transport and special access services.

areas in which AT&T was the only carrier "represent[ed] a very small share of the total market."[17] Similarly, when the Commission found that COMSAT faced competition on some routes but not on others, it lifted rate regulation for only those routes where there was a competitive alternative.[18]

The test proposed by the LECs does not even establish that market forces could constrain switched access rates for the 50 percent of customer locations to which competitors "offer" service. After all, the LECs' proposed test would be met even if there was only a single competitor, and even if the competitor lacked sufficient economies of scale or the supply elasticity in the market was insufficient to constrain pricing. For example, the Access Reform Fifth Report and Order's definition of "offering service" does not establish that unbundled loops are actually available "quickly, at economic cost, and in adequate quantities" -- the three key prerequisites for successful competitive entry using unbundled loops.[19] Only the type of analysis that the Commission conducted in the AT&T and COMSAT proceedings -- evaluating demand elasticity, supply elasticity, market share, cost structures, and the incumbent's pricing behavior -- can ensure that rate regulation is not lifted prematurely.

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[17]In the Matter of Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2634 (¶ 58) (1990).

[18]In the Matter of COMSAT Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083, 14147-14148 (1998).

[19]Access Reform First Report and Order, 12 FCC Rcd at 16102.

MCI WorldCom fully agrees with Sprint, Cable and Wireless, and CompTel that it is premature for the Commission to even consider crafting a Phase II pricing flexibility framework for switched access services. The Commission should defer any further action on Phase II pricing flexibility until (1) there has been some experience with the Phase I pricing flexibility test for switched access services; and (2) there is at least some indication that competitive entry is constraining prices for switched access services. In the interim, the Commission could address any switched access Phase II pricing flexibility requests on a case by case basis, using the types of market power analysis employed in the AT&T and COMSAT proceedings. Once the Commission had gained experience analyzing the competitive characteristics of the switched access market, the Commission would then be in a position to craft a generally-applicable Phase II pricing flexibility framework.

If the Commission does proceed with a Phase II pricing flexibility framework at this time, which it should not, that framework should apply only to switched access charges assessed to end users. As Sprint explains in its comments, the Commission cannot simply assume that market forces can constrain the switched access rates assessed on IXCs. Under no circumstances should the Commission craft a Phase II pricing flexibility framework that would apply to terminating access charges.

IV. CLEC Access Charges

In our initial comments, MCI WorldCom recommended that the Commission adopt rules and policies to maximize the market discretion of purchasers of originating switched access. In particular, MCI WorldCom urged the Commission to recognize that IXCs have broad discretion with respect to originating access, including but not limited to: call blocking, filing a disconnect ASR with the CLEC, and surcharging the end user insofar as the CLEC adopts unusually high access charges. Such rules and policies would provide all parties with the appropriate incentives to negotiate mutually agreeable arrangements for originating switched access. MCI WorldCom further recommended that the Commission extend the benefits of the market for originating access to terminating and "open-end" minutes, by adopting a rule that charges for those services may not exceed the carrier's corresponding charges for originating access. In addition, MCI WorldCom recommended that the Commission adopt a presumption that CLEC rates in excess of NECA rates are prima facie unreasonable, to control the burden of production in complaint proceedings. In light of the voluminous comments submitted by other parties on these issues, MCI WorldCom continues to advise the Commission to adopt the simple, pro-competitive rules and policies outlined in our initial comments. MCI WorldCom also agrees with those commenters who support establishing a zone of reasonableness within which CLEC rates would be presumed just and reasonable.[20]

In these reply comments, MCI WorldCom responds to arguments against the Commission adopting the rules and policies recommended in our initial comments. Most commenters focused on four issues: the relevance of interconnection and common

[20] *See, e.g.,* Comments of Focal Communications Corporation and Hyperion Telecommunications, Inc. d/b/a Adelphia Business Solutions at 9, suggesting that CLEC charges within 25% of those imposed by the dominant ILEC should be presumed just and reasonable.

carrier duties to the questions asked in the further notice; the implications of the toll rate averaging and integration requirements found in section 254(g); speculation regarding harms from alleged disparities in bargaining power between IXCs and CLECs; and the identification and use of a benchmark rate for CLEC access charges. In some cases, commenters recommend that the Commission adopt regulatory policies that would thwart the goal of Congress and this Commission to achieve a pro-competitive, deregulatory national policy framework for the telecommunications industry.

A. Interconnection duties should not be interpreted to force IXCs to accept the originating access services offered by CLECs, except to the extent necessary to ensure that all end users have access to interexchange services.

According to many commenters, the duty to interconnect established in sections 201(a) and 251(a)(1) means that IXCs must accept the originating and terminating access services offered by any LEC.[21] If the CLEC offers those services pursuant to unjust or unreasonable terms and conditions, the IXC cannot refuse to accept the service, but must instead pursue a remedy under the provisions of section 208.[22] MCI WorldCom basically agrees with this analysis with respect to terminating access services, but urges the Commission not to adopt such a broad interpretation of interconnection duties with respect to originating access services.

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[21] *See, e.g.,* Comments of the Association for Local Telecommunications Services (Comments of ALTS) at 24.

[22] *See, e.g.,* Comments of Allegiance Telecom, Inc. at 4.

The transition from a monopoly public switched telephone network (PSTN), to a competitively-provided, seamlessly-interconnected PSTN requires careful thinking about the meaning of the duty to interconnect. That duty should not be interpreted so broadly as to stifle competition and innovation. MCI WorldCom recommends that the duty to interconnect be interpreted in light of the objective to achieve a competitively-provided, seamlessly-interconnected PSTN. In that light, it is clear that IXCs should not be allowed to refuse any LEC's terminating access services, if such refusal would result in call-blocking. However, there is no legitimate reason to include a duty to accept originating switched access within the duty to interconnect, except insofar as a class of end users would otherwise be left without access to interexchange services.[23]

Under the Commission's rules, interconnection is defined as "the linking of two networks for the mutual exchange of traffic" (47 C.F.R. § 51.5). Section 251(a)(1) of the Telecommunications Act provides that each carrier has a duty to interconnect either directly or indirectly with the facilities and equipment of other carriers. Thus, an IXC must either directly or indirectly link its network with the facilities and equipment of other carriers, including CLECs. Neither the statute nor the Commission's rules explicitly require IXCs to accept the originating or terminating access services offered by CLECs.

A non-dominant carrier's duty to interconnect should be interpreted to require the carrier to establish whatever interconnection arrangements are needed to: (1) allow all

[23] Given the thriving markets for both retail and wholesale interexchange services, this eventuality is likely to be extremely rare. Indeed, it is probable that any CLEC can provide interexchange services, at least as a reseller, to its customers.

end users that are not customers of that carrier to connect with any publicly-dialable telephone number for which that carrier is the service provider; and (2) allow all end users that are customers of that carrier to connect with any publicly-dialable telephone number regardless of the identity of the service provider associated with that telephone number.

Thus interpreted, an IXC would comply with its duty to interconnect by establishing whatever connections, direct or indirect, are needed either for its customers to complete any call, or for non-customers to complete calls to customers of the IXC's open-end services, such as toll free. This would necessarily require the IXC to accept the terminating and open-end access services offered by all CLECs. If a particular CLEC attempted to impose unjust or unreasonable terms and conditions on their terminating or open-end access services, the IXC would be entitled to file a section 208 complaint, but could not decline the access service or exercise other self-help options outside of the complaint process. By including these requirements in the duty of non-dominant IXCs to interconnect, the Commission would promote the seamlessness of the PSTN without dictating that IXCs must offer services in all places to the customers of all LECs.

If the Commission is to promote its stated goal of establishing a pro-competitive, deregulatory national policy framework for the industry, it must not assist those CLECs that would extend the duty to interconnect to include a duty to accept originating access services. In effect, these carriers ask that IXCs be coerced into offering services to the end users of all LECs, regardless of the terms and conditions under which originating access is offered. Such a result is inconsistent with the Commission's announced policy of allowing the market to discipline the charges and practices of non-dominant carriers. By definition a market consists of willing buyers and willing sellers. These CLECs are asking the Commission to force IXCs to purchase their originating access services without regard to their willingness to do so. The Commission should decline this invitation.

Several practical circumstances support a policy of allowing IXCs to decline the originating access services offered by a particular LEC. For example, the terms and conditions, if any, under which a particular LEC would offer billing and collection services or billing name and address information, might be unacceptable to an IXC. Without such services or information an IXC would be unable to collect revenue from the use of its 1+ or casual calling services by the customers of that LEC. There can be no justification for requiring IXCs to provide services for free. Similarly, the LEC might offer its originating access services under terms and conditions that are unacceptable to the IXC. Once again, the IXC should not be required to offer its services when the expected revenue does not justify the expected cost.

The duty to interconnect does not necessarily include a duty to accept originating access services. Such a duty is unnecessary to ensure that all users of the PSTN can connect with all publicly dialable telephone numbers. The establishment of such a duty would threaten to make IXCs into unwilling buyers of some originating access services, and would thereby eliminate an opportunity to encourage marketplace solutions over regulation. The Commission should, consistent with its dedication to pro-competitive, deregulatory policies, decline to take this backward step in the evolution of competition.

B. Traditional common carrier duties do not require that IXCs offer services in all circumstances without regard to material differences in the terms and conditions under which particular LECs offer originating access services.

Several commenters suggest that under traditional common carrier duties, IXCs must offer their services in all places to the customers of all LECs.[24] This supposed duty creates the additional duty to accept the originating access services offered under tariff by all LECs. But traditional common carrier duties do not require non-dominant IXCs to offer services in all places to the customers of all LECs. If such a duty existed it would create the absurd result that one class of carriers, LECs, could force another class of carriers, IXCs, to become its customers simply by filing a tariff. The Commission has previously rejected such a policy.[25] It should not allow it in this instance.

A common carrier cannot offer service to one customer and refuse to provide service to another similarly-situated customer. This policy embodies a fundamental principle, established in the Act, that allows no unreasonable discrimination. It is not so broad as to require common carriers to establish tariffs under which their services will be provided to all end users everywhere, at the same price, without regard to material differences in the underlying circumstances. When a LEC offers its originating access

[24] *See, e.g.,* Comments of the Rural Independent Competitive Alliance at 7.

[25] For example, at the time when equal access was introduced, the Commission never required new entrants to the interexchange market to offer their services ubiquitously.

services on terms and conditions that are materially different from those associated with the offerings of other LECs, common carrier duties need not require that an IXC offer its services to the end users of the first LEC simply because it offers services to the end users of other LECs. An IXC might indeed file a tariff that limits its offerings to end users served by LECs from which the IXC has arranged to receive originating access services, as AT&T appears to have done.

C. Toll rate averaging and integration requirements are irrelevant to surcharges imposed by IXCs that are not based on where an end user is located.

A number of commenters argue that the toll rate averaging and integration requirements found in section 254(g) of the Telecommunications Act, somehow prevent IXCs from surcharging end users based on the access charges imposed by their LECs, regardless of whether the customer is located in a rural area.[26] There is no reason to adopt such a broad interpretation of that section. If the Commission were to adopt such an interpretation, it would needlessly harm the competitiveness of the interexchange market.

Section 254(g) states that:

> [w]ithin 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers

[26] *See, e.g.*, Comments of Allegiance Telecom, Inc. at 18.

> in each State at rates no higher than the rates charged to its subscribers in any other State.

Pursuant to this mandate, the Commission established rules that include language identical to the statutory language (47 C.F.R. § 64.1801). Thus, under the statute and the Commission's rules, IXCs cannot: (1) charge more to subscribers in rural areas than to subscribers in urban areas; or (2) charge more to the residents of one State than to those of another. These prohibitions are utterly silent as to whether an IXC may charge more to non-rural subscribers in all states when their LEC adopts unusually high originating access charges.

The Commission should expressly permit IXCs to surcharge end users based on the originating access charges associated with those end users, so long as the IXCs do so in a manner that does not disproportionately affect rural subscribers. Similarly, IXCs should not establish a surcharge based on the state where a subscriber resides. Instead, such a surcharge should only be based on the level of the originating access charges associated with the subscriber.

By allowing IXCs to surcharge end users in this manner, the Commission would unleash powerful market forces. This policy would enable IXCs to respond in the marketplace to unusually high CLEC access charges, and would encourage all charges to be made explicit to the end users, who are the ultimate cost causers. If, instead, the Commission interprets section 254(g) to prohibit such surcharges, it will be tacitly encouraging the continued use of access charges to subsidize local exchange services. Indeed, a broad reading of 254(g) combined with an interpretation of interconnection duties that requires IXCs to accept the originating access services of all LECs, will allow some CLECs to offer their services to particular market niches at rates far below their marginal cost. They will instead recover their costs from their unwilling customers, the IXCs. This result should not be allowed.

D. Alleged disparities in bargaining power between IXCs and CLECs do not justify forcing IXCs to accept a CLEC's originating access services.

According to some commenters, substantial disparities in bargaining power between IXCs and CLECs require the Commission to force IXCs to do business with those CLECs according to whatever terms and conditions appear in their tariffs.[27] There is no showing of market failure in the interexchange market sufficient to justify such a heavy-handed approach. Indeed, the Commission has consistently found the interexchange market to be robustly competitive. A firm that operates in a competitive market by definition lacks the monopsony power needed to force its suppliers to accept unreasonable terms and conditions.

Neither MCI WorldCom nor any other IXC can afford to forego revenue as part of a strategy to lower input costs, unless the costs associated with that revenue are unreasonably high. In any case, such a strategy would be doomed to failure. Only a secure monopsonist can even consider such a strategy. Thus, IXCs will necessarily agree to reasonable terms and conditions for originating access. To do otherwise would be to consign customers to one's competitors. In a competitive market, this only makes sense when one would otherwise be forced to do business at a loss.

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[27] *See, e.g.,* Comments of Teligent, Inc. at 4-6.

By contrast, CLECs may exercise market power in switched access markets. Such market power is likely related to the continued success of the ILECs in resisting the development of robust local exchange competition. Since the local exchange market is only unevenly competitive, it may be possible for some CLECs to exercise market power in switched access. Accordingly, the Commission should assume, if anything, that CLECs have the superior bargaining position with respect to IXCs.

E. The access charges of large ILECs should not be used as a benchmark for CLEC access charges.

A few commenters recommend that the Commission establish as a benchmark for CLEC access charges, charges of the dominant ILEC in the area where the CLEC operates.[28] MCI WorldCom agrees with the majority of commenters that such a policy is inappropriate. As many commenters have demonstrated, there are a number of reasons why a CLEC might legitimately charge more for its access services than would a large ILEC.[29] Such reasons include: different rate structures, economies of scale, and the presence of high start-up costs. Given these circumstances, any benchmark that the Commission selects should err on the high side. MCI WorldCom has recommended that the Commission use NECA rates as a benchmark to control the burden of production in complaint cases. MCI WorldCom would not oppose development of alternative

[28] *See, e.g.,* Comments of Sprint Corporation at 21.

[29] *See, e.g.,* Comments of ALTS at 4.

benchmark, such as that suggested by ALTS,[30] as long as the benchmark would not be set so low as to effectively force CLECs to offer below-cost services. If the Commission adopts MCI WorldCom's recommendation to recognize that IXCs have broad marketplace discretion with respect to the originating access services of CLECs, and adopts a rule to require that CLECs charge no more for terminating or open end services than for originating, a relatively high benchmark should be appropriate.

Respectfully submitted,
MCI WORLDCOM, INC.

Alan Buzacott
Henry G. Hultquist
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-3204

November 29, 1999

[30] *Id.* at 9.

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on November 29, 1999.

Al Bzutt
Alan Buzacott
Regulatory Analyst
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Reply Comments were sent via first class mail, postage paid, to the following on this 29th day of November, 1999.

International Transcription Services*
1231 20th Street, N.W.,
Washington, DC 20036

Wanda Harris*
Competitive Pricing Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

William E. Kennard*
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Harold Furchtgott-Roth*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael Powell*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Susan Ness*
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Gloria Tristani, Commissioner*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dorothy Attwood*
Chairman's Office
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Linda Kinney*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Rebecca Beynon*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Kyle Dixon*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Sarah Whitesell*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lawrence Strickling*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Yog R. Varma*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jane Jackson*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Rich Lerner*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tamara Preiss*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ken Moran*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street N.W., 11th Floor
Washington, DC 20036

John H. Harwood II
Samir Jain
David M. Sohn
Julie A. Veach
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420

Jeffry Brueggeman
U S West, Inc.
1801 California Street
Denver, CO 80202

Gregory J. Vogt
William B. Baker
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge, MS HQ-E03J43
P.O. Box 152092
Irving, TX 75015-2092

Joseph DiBella
Bell Atlantic
1320 North Courthouse Road
Eighth Floor
Arlington, VA 22201

M. Robert Sutherland
Richard M. Sbaratta
BellSouth
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 20209-3610

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T
Room 1135L2
295 North Maple Avenue
Basking Ridge, NJ 07920

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
Julie E. Rones
USTA
1401 H Street, NW, Suite 600
Washington, DC 20005

Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW
Suite 900
Washington, DC 20036

Rachel J. Rothstein
Brent M. Olson
Cable & Wireless USA Inc.
8219 Leesburg Pike
Vienna, VA 22182

Danny E. Adams
Robert J. Aamoth
Joan M. Griffin
Kelley Drye & Warren LLP
1200 19th Street N.W., Suite 500
Washington, DC 20036

George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, N.W., Room 4002
Washington, DC 20405

Carol Ann Bischoff
Competitive Telecommunications Association
1900 M Street N.W., Suite 800
Washington, DC 20036

Lawrence Malone
General Counsel
Public Service Commission of New York
Three Empire State Plaza
Albany, NY 12223

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Spevak
SBC Communications Inc.
One Bell Plaza, Room 3003
Dallas, TX 75202

Lynda Dorr
Public Service Commission of Wisconsin
610 North Whitney Way
Madison, WI 53707

J. D'Auria
J. Kuhns
Enterprise Networking Technologies Users Assn.
PMB 322
320 E. Maple
Birmingham, MI 48009

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402

Stuart Polikoff
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

Margot Smiley Humphrey
Koteen & Naftalin
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

Marie Guillory
Daniel Mitchell
The Nat'l. Telephone Cooperative Assn.
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Albert H. Kramer
Robert F. Aldrich
Dickstein Shapiro Morin & Oshinsky
2101 L Street, NW
Washington, DC 20037

David Irwin
Irwin, Campbell & Tannenwald
1730 Rhode Island Avenue, NW
Suite 200
Washington, DC 20036

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, NW
Washington, DC 20006

Doug Dawson
Competitive Communications Group
6811 Kenilworth Avenue, Suite 302
Riverdale, MD 20737

Robert M. Halperin
Crowell & Moring
1001 Pennsylvania Avenue, NW
Washington, DC 20004

John W. Katz
Office of the State of Alaska
Suite 336
441 North Capitol Street, NW
Washington, DC 20001

David Cosson
Kraskin, Lesse & Cosson
2120 L Street, NW, Suite 520
Washington, DC 20037

Russell M. Blau
Kermal M. Hawa
Swidler Berlin Shereff Friedman
3000 K Street, NW, Suite 300
Washington, DC 20007

Brian Conboy
Thomas Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Andrew D. Lipman
Tamar E. Finn
Swidler Berlin Shereff Friedman
3000 K Street, NW, Suite 300
Washington, DC 20007

Laura H. Phillips
J.G. Harrington
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

James L. Casserly
Ghita J. Harris-Newton
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo
701 Pennsylvania Avenue NW, Suite 900
Washington, DC 20004

Kenneth A. Kirley
McLeod USA Telecommunications
Services, Inc.
400 S. Highway 169, No. 750
Minneapolis, MN 55426

Herbert E. Marks
Brian J. McHugh
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
Washington, DC 20044

Kent F. Heyman
Scott A. Sarem
Richard E. Heatter
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, NV 89129

Danny E. Adams
Joan M. Griffin
Enrico Soriano
Kelley Drye & Warren
1200 19th Street, NW, Suite 500
Washington, DC 20036

Jonathan Canis
Charles M. Oliver
Kelley Drye & Warren
1200 19th Street, NW, Suite 500
Washington, DC 20036

Lawrence E. Harris
David S. Turetsky
Terri B. Natoli
Edward B. Krachmer
Teligent, Inc.
8065 Leesburg Pike, #400
Vienna, VA 22182

Patrick Donovan
William L. Fishman
Swidler Berlin Shereff Friedman
3000 K Street, NW, Suite 300
Washington, DC 20007

Carolyn C. Hill
ALLTEL Communications, Inc.
601 Pennsylvania Avenue, NW
Suite 720
Washington, DC 20004

**HAND DELIVERED

Vivian Lee

Vivian Lee